

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION**

SBC

Employer

and

13-RD-2450

**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL 21**

Union

and

CAROLYN PRUITT

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on February 26, 2004 before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.¹

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

I. ISSUE

The International Brotherhood of Electrical Workers, Local 21 (hereafter the “Union”) argues that the Regional Director should continue to hold the instant petition in abeyance pending the outcome of its appeal of the Region’s determination to dismiss Case No. 13-CA-41466. SBC (hereafter the “Employer”) and the Petitioner assert that the Region should continue processing the petition notwithstanding the Union’s appeal. The Employer further argues that the issue raised by the Union is an administrative issue not subject to litigation in representation case proceedings.

II. DECISION

For the reasons discussed in detail below, I find that the instant Petition should be processed by the Region. Based on this finding,

IT IS HEREBY ORDERED that an election in the bargaining unit described below be conducted under the direction of the undersigned at a time and place to be set forth in a subsequently issued notice of election:

All full-time and regular part-time Engineering Assistants in the Network Services’ Engineering & Construction organization and Network Infrastructure Maintenance organization employed by the Employer who are within the jurisdiction of IBEW Local 21; but excluding all other employees, guards, professional employees and supervisors as defined in the Act².

III. STATEMENT OF FACTS

The instant petition was filed by the Petitioner on October 29, 2003, however, processing the petition at that time was blocked by the pendency of unfair labor practice charges in Case 13-CA-41466, which was considered a Type II blocking charge in the Board’s *Casehandling Manual, Part Two, Representation Proceedings*, Section 11730.3. The single exhibit introduced into the record by the Employer is a dismissal letter issued by the

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- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
 - c. The labor organization involved claims to represent certain employees of the Employer.
 - d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

² The unit description appears as stipulated by the Parties in the record.

Region of Case 13-CA-41466. The Union argued on the record that the Region should continue to block the processing of the instant petition pending the outcome of its appeal of the Regional dismissal of Case 13-CA-41466.

IV. ANALYSIS:

The Union's contention that Case 13-CA-41466 should continue to block the processing of the instant petition is not properly the subject of an R Case hearing. The Board's *Casehandling Manual, Part Two, Representation Proceedings*, Section 11732, sets forth that the determination of whether to continue to hold a petition in abeyance pending the results of an appeal of a dismissal of Type II unfair labor practice charge is an administrative matter within the discretion of the Regional Director. The Acting Regional Director has exercised her discretion administratively and has determined to process the instant petition in accordance with Section 11732 of *Board's Casehandling Manual, Part Two, Representation Proceedings*, as evidenced by the Order Scheduling Hearing issued on February 13, 2004. The Acting Regional Director's decision on that matter is not subject to litigation. Therefore, I will direct the election for the petitioned for unit as stipulated by the parties.

At the hearing the parties expressed a desire for a election to be conducted by mail ballot. The method of conducting an election is a matter within the administrative discretion of the undersigned after the issuance of a Decision and Direction of Election. The desires of the parties on this matter will be taken into consideration in a notice of election to be issued subsequently

V. SUM

Based on the foregoing and the entire record herein, I have found that: the Region should continue to process the instant petition without delay. Accordingly, I have directed an election herein in the unit set forth above.

VI. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as

strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Brotherhood of Electrical Workers, Local 21.

VII. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois 60606 on or before **March 17, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

IX. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by **March 24, 2004** .

DATED at Chicago, Illinois this 10th day of March 10, 2004.

_____,

/s/ Gail R. Moran

**Gail R. Moran
Acting Regional Director
National Labor Relations Board
Region Thirteen
200 West Adams Street, Suite 800
Chicago, Illinois 60606**

347-6020-5075

CATS-Nolss